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UNITED STATES DISTRICT COURT

STATE OF NEVADA

JOHN IANNUZZI, an individual,

Plaintiff

v.

EOS FITNESS BRAND, LLC,

Defendant

CASE NO.: 2:20-cv-02194

COMPLAINT

DEMAND FOR JURY

COMES NOW, Plaintiff JOHN IANNUZZI (“IANNUZZI”), by and through his counsel of record Anthony Golden, Esq., and Amanda J. Brookhyser, Esq., of GARG GOLDEN LAW FIRM, and hereby file this Complaint against Defendant EOS FITNESS BRAND, LLC (“EOS”) and allege as follows:

PARTIES

1. IANNUZZI is an individual who, at all times herein, resided in Clark County, Nevada.
2. EOS is a Nevada Limited Liability Company that owns and operates gyms in Clark County, Nevada.
3. Upon information and belief, EOS operates the EOS Fitness facility located at 8125 W. Sahara Ave., Suite 100, Las Vegas, Nevada 89117.

JURISDICTION

4. This action is brought to remedy violation of the rights of Plaintiff under the Age Discrimination in Employment Act (ADEA), under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, Nevada Revised Statutes (“NRS”) § 613 *et seq.*, and the common law. This Court has jurisdiction under the ADEA and Title VII, and supplemental jurisdiction over the claims arising under Nevada law pursuant to 28 U.S.C. § 1367 and the principles of pendant jurisdiction.
5. Venue is proper in Clark County, Nevada because IANNUZZI resides in Clark County, Nevada, EOS is domiciled in Nevada and operates in Clark County, Nevada, and the incidents that give rise to this action occurred in Clark County, Nevada.

GENERAL ALLEGATIONS

6. IANNUZZI began his employment with EOS in March 2018 as a front desk representative.
7. His job duties included answering the phone, greeting and checking customers in, working the cash register, and assisting members or other employees with additional tasks.
8. At the time of his hiring, IANNUZZI was over forty (40) years old.
9. IANNUZZI was an exemplary employee. He never called in sick, was always on time, and was well-respected by his co-workers.
10. IANNUZZI would go above and beyond his typical duties to help out other employees and help customers.
11. IANNUZZI'S direct manager when he was hired, Christina Diaz (“DIAZ”), supported IANNUZZI and believed he was doing a great job.
12. Soon after IANNUZZI was hired, Josh Queenan (“QUEENAN”), the general manager, directed DIAZ to hire a younger female instead of IANNUZZI. QUEENAN stated that this direction came from upper management,

1 including Vice President Marcel Kuerzi (“KUERZI”) and Regional Vice
2 President Eric McCauley (“MCCAULEY”).

3 13. It was known to QUEENAN, KUERZI, and MCCAULEY that IANNUZZI was
4 over forty (40) years old at the time.

5 14. After the initial demand by QUEENAN to hire a younger female was made,
6 he continued, at least twice a month, in the months that followed to demand
7 that DIAZ “hire a young female with large breasts” to replace IANNUZZI.
8 MCCAULEY was present for at least two of these conversations.

9 15. IANNUZZI was made to stand at the front desk for seven (7) hours at a time
10 without breaks while the younger employees were allowed breaks.

11 16. Younger female employees were allowed to dress out of the mandatory
12 uniform while IANNUZZI was reprimanded for not wearing the mandatory
13 uniform.

14 17. IANNUZZI was employed past the regular introductory period for health
15 benefits but was repeatedly denied health coverage.

16 18. On or about August 20, 2018 QUEENAN told DIAZ to demote IANNUZZI
17 from a full-time employee to on-call. When DIAZ refused to demote
18 IANNUZZI, she was transferred to another EOS location in retaliation.

19 19. Shortly thereafter, on or about January 28, 2019, IANNUZZI was fired for
20 allegedly stealing food from EOS.

21 20. The real motive behind IANNUZZI’S firing was to replace him with a younger
22 female.

23 21. QUEENAN, KEURZI, and MCCAULEY were employees of EOS at the time
24 of the allegations herein.

25 22. QUEENAN, KEURZI, and MCCAULEY were acting within the course and
26 scope of their employment with EOS when they discriminated against
27 IANNUZZI and fired him in order to replace him with a younger female.

28 23. QUEENAN’S actions as manager were taken with the approval of, and ratified

1 by, KUEZI, MCCAULEY and EOS.

2 24. EOS' conduct was severe and pervasive. It was of the kind that would shock
3 the conscience of any reasonable person and was of the kind that would not
4 be acceptable in civilized society.

5 25. On or about May 30, 2019, IANNUZZI submitted a Complaint for age and sex
6 discrimination to the Equal Employment Opportunity Commission (EEOC)
7 and the Nevada Equal Rights Commission (NERC). IANNUZZI submitted an
8 Amended Charge on February 20, 2020.

9 26. On or about September 4, 2020 IANNUZZI received a Right-to-Sue Notice
10 from NERC. On or about September 5, 2020 IANNUZZI received a Notice of
11 Right to Sue from the EEOC.

12 27. This action is timely filed pursuant to 42 U.S.C. § 2000e-5(f).

13 28. IANNUZZI has exhausted all his administrative remedies on all claims pled
14 hereunder prior to filing this action with this Court.

15 **FIRST CAUSE OF ACTION**

16 **Discrimination Based on Sex in Violation of Title VII of the Civil Rights Act of 1964**

17 29. Plaintiff repeats and realleges the foregoing allegations as if fully set forth
18 herein.

19 30. IANNUZZI is a member of the class of persons protected by state and federal
20 statutes prohibiting discrimination based on sex.

21 31. Defendant EOS as employer is subject to Title VII, 42 U.S.C. § 2000e, etc., as
22 amended and, thus, has a legal obligation to provide IANNUZZI a fair, non-
23 discriminatory work environment and employment opportunities.

24 32. EOS refused to take reasonably adequate steps to prevent discrimination
25 against IANNUZZI by knowingly favoring employees not of IANNUZZI'S
26 protected class.

27 33. EOS discriminated against IANNUZZI when it failed to treat him the same
28 way as similarly situated employees not of IANNUZZI'S protected class.

34. IANNUZZI was subjected to discriminatory conduct by QUEENAN, KEURZI, and MCCAULEY on a pervasive and ongoing basis.

35. No other similarly situated persons, not of IANNUZZI'S protected class, were subject to the same or substantially similar conduct.

36. IANNUZZI suffered adverse economic impact due to EOS'S unlawful treatment of him, including his termination.

37. IANNUZZI was embarrassed, humiliated, angered, depressed, and discouraged by the discriminatory actions taken against him.

38. IANNUZZI suffered compensable emotional and physical harm, including but not limited to, sleeplessness, anxiety, depression, hopelessness, and helplessness resulting from this unlawful discrimination by EOS.

39. IANNUZZI is entitled to be fully compensated for his emotional disturbance by being forced to endure this discrimination.

40. Pursuant to the 1991 amendments to Title VII, IANNUZZI is entitled to recover punitive damages for EOS'S intentional repeated violations of federal and state civil rights laws.

41. IANNUZZI suffered damages in an amount to be determined by the Jury.

42. IANNUZZI is entitled to an award of reasonable attorney's fees.

43. EOS is guilty of oppression, fraud, and/or malice, express or implied, as EOS knowingly and intentionally discriminated against IANNUZZI because of his sex.

44. Therefore, IANNUZZI is entitled to recover damages for the sake of example, to deter other employers from engaging in such conduct and by way of punishing EOS in an amount to be determined by a Jury.

SECOND CAUSE OF ACTION

Discrimination and Harassment Based on Sex in Violation of NRS 613.330(1)(a)

45. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

1 46.NRS 613.330(1)(a) demonstrates that an employer cannot discriminate
2 against any person with respect to the person's compensation, terms,
3 conditions, or privileges of employment because of his sex.

4 47. EOS refused to take reasonably adequate steps to prevent discrimination
5 against IANNUZZI by knowingly favoring employees not of IANNUZZI'S
6 protected class.

7 48. EOS discriminated against IANNUZZI when they failed to treat him the same
8 way as similarly situated employees not of IANNUZZI'S protected class.

9 49. IANNUZZI was subjected to discriminatory conduct by QUEENAN, KEURZI,
10 and MCCAULEY on a pervasive and ongoing basis.

11 50. No other similarly situated persons, not of IANNUZZI'S protected class, were
12 subject to the same or substantially similar conduct.

13 51. IANNUZZI suffered adverse economic impact due to EOS'S unlawful
14 treatment of him, including his termination.

15 52. IANNUZZI was embarrassed, humiliated, angered, depressed, and
16 discouraged by the discriminatory actions taken against him.

17 53. IANNUZZI suffered compensable emotional and physical harm, including but
18 not limited to, sleeplessness, anxiety, depression, hopelessness, and
19 helplessness resulting from this unlawful discrimination by EOS.

20 54. IANNUZZI is entitled to be fully compensated for his emotional disturbance
21 by being forced to endure this discrimination.

22 55. IANNUZZI is entitled to recover punitive damages for EOS'S intentional
23 repeated violations of NRS 613.330 et. seq.

24 56. IANNUZZI suffered damages in an amount to be determined by the Jury.

25 57. IANNUZZI is entitled to an award of reasonable attorney's fees.

26 58. EOS is guilty of oppression, fraud, and/or malice, express or implied, as EOS
27 knowingly and intentionally discriminated against IANNUZZI because of his
28 sex.

1 59. Therefore, IANNUZZI is entitled to recover damages for the sake of example,
2 to deter other employers from engaging in such conduct and by way of
3 punishing EOS in an amount to be determined by a Jury.

4 **THIRD CAUSE OF ACTION**

5 **Discrimination Based on Age in Violation of the Age Discrimination in Employment**
6 **Act**

7 60. Plaintiff repeats and realleges the foregoing allegations as if fully set forth
8 herein.

9 61. It is the pattern and practice of EOS to treat employees differently and
10 negatively when the employee is among the older employees at EOS.

11 62. IANNUZZI was treated differently and negatively with regard to performance
12 standards, and the standards under which disciplinary action is imposed,
13 relative to all younger employees of EOS at the time his termination occurred.

14 63. For the reasons set forth herein, and in the papers filed with the EEOC and
15 the NERC, EOS violated 29 U.S.C. § 623(a)(1) of the ADEA, and NRS
16 613.330(1), by unlawfully discriminating against IANNUZZI due to his age,
17 over 40, and by discriminating against him in favor of younger employees.

18 64. Because EOS unlawfully discriminated against IANNUZZI on account of his
19 age, in violation of federal and Nevada law, Defendants must pay IANNUZZI
20 damages in an amount to be determined by the Jury at trial, including
21 compensatory damages for emotional pain, anguish, suffering, and
22 inconvenience.

23 65. IANNUZZI was embarrassed, humiliated, angered, depressed, and
24 discouraged by the discriminatory actions taken against him.

25 66. EOS is guilty of oppression, fraud, and/or malice, express or implied, as EOS
26 knowingly and intentionally discriminated against IANNUZZI because of his
27 age.

28 67. Therefore, IANNUZZI is entitled to recover damages for the sake of example,

1 to deter other employers from engaging in such conduct and by way of
2 punishing EOS in an amount to be determined by a Jury.

3 68.IANNUZZI is entitled to recover punitive damages for EOS'S intentional
4 repeated violations of NRS 613.330 et. seq.

5 69.IANNUZZI suffered compensable emotional and physical harm, including but
6 not limited to, sleeplessness, anxiety, depression, hopelessness, and
7 helplessness resulting from this unlawful discrimination by EOS.

8 70.IANNUZZI suffered adverse economic impact due to EOS'S unlawful
9 treatment of him, including his termination.

10 71.IANNUZZI is entitled to an award of reasonable attorney's fees.

11 **FOURTH CAUSE OF ACTION**

12 **Intentional Infliction of Emotional Distress**

13 72. Plaintiff repeats and realleges the foregoing allegations as if fully set forth
14 herein.

15 73.An actor commits intentional infliction of emotional distress when that actor's
16 conduct was extreme or outrageous with either the intention of, or reckless
17 disregard for, causing emotional distress to another, and that the victim
18 suffered severe or extreme emotional distress as the actual and proximate
19 result of the actor's conduct.

20 74.Defendant's conduct is that which is outside all possible bounds of decency and
21 is regarded as utterly intolerable in a civilized community.

22 75.Defendants' actions towards Plaintiff including, but not limited to, his
23 termination because of his age and sex, and other acts, constitute oppressive
24 conduct that was extreme and outrageous with the intention of, or reckless
25 disregard for, the emotional distress is caused IANNUZZI.

26 76.IANNUZZI suffered severe emotional distress caused by the actions of the
27 Defendant and its agents. IANNUZZI suffered from depression, anxiety, anger,
28 feelings of helplessness, feelings of hopelessness, fear of losing his income, and

1 humiliation.

2 77. Defendant's conduct was the direct and proximate cause of injury to
3 IANNUZZI.

4 78. EOS is vicariously liable for the actions of QUEENAN, KEURZI, and
5 MCCAULEY because those actions were not independent ventures, were
6 committed during the very tasks assigned to QUEENAN, KEURZI, and
7 MCCAULEY by EOS, and were reasonably foreseeable.

8 79. IANNUZZI has been forced to seek legal counsel to pursue his valid legal
9 claims against Defendant and he is therefore entitled to reasonable attorney's
10 fees.

11 80. Defendant is guilty of oppression, fraud, and/or malice, express or implied,
12 because EOS knowingly and intentionally caused harmful and offensive
13 conduct towards IANNUZZI with the intention of, or reckless disregard for, the
14 damages that it was causing to IANNUZZI.

15 81. Therefore, IANNUZZI is entitled to collect punitive damages from EOS in an
16 amount to be determined by a Jury.

17 **FIFTH CAUSE OF ACTION**

18 **Negligent Hiring, Training, Supervision, and Retention**

19 82. Plaintiff repeats and realleges the foregoing allegations as if fully set forth
20 herein.

21 83. Defendant had a duty to take reasonable action in the hiring, training and
22 supervision of its employees.

23 84. Defendant had a duty to train its employees on applicable policies and
24 procedures, as well as requirements of federal and Nevada law, that must be
25 followed in the management, disciplining, and termination of employees.

26 85. Defendant had a duty to supervise its employees in a reasonable manner so as
27 to assure that its employees were following all applicable policies and
28 procedures as well as federal and Nevada law.

1 86. Defendant had a duty to supervise all employees to assure that no employee
2 was taking discriminatory, harassing, or other improper actions against
3 another employee.

4 87. QUEENAN, KEURZI, and MCCAULEY did not follow EOS'S policies and
5 procedures or federal and Nevada law when they discriminated against
6 IANNUZZI because of his sex and age and when they unlawfully terminated
7 him.

8 88. Defendant breached this duty by failing to properly train employees, including
9 QUEENAN, KEURZI, and MCCAULEY, in the proper procedures and policies,
10 or federal and Nevada law, that must be followed.

11 89. EOS'S failure to adequately hire, train, and supervise QUEENAN, KEURZI,
12 and MCCAULEY was the direct and proximate cause of injury to IANNUZZI.

13 90. IANNUZZI has been forced to seek legal counsel to pursue his valid legal
14 claims against Defendant and he is therefore entitled to reasonable attorney's
15 fees.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment
18 for Plaintiff as follows:

19 1. Awarding judgment as appropriate and requiring Defendant to pay
20 Plaintiff's compensatory damages, consequential damages, special damages, and any
21 other damages described herein and to be proven at trial, including back pay, and
22 front pay, in an amount in excess of \$15,000.00;

23 2. Awarding prejudgment interest;

24 3. Awarding punitive damages;

25 4. Awarding Plaintiff fees and costs associated with bringing this action,
26 in addition to reasonable attorney's fees as provided by the United States and or the
27 Nevada statutes; and

28 5. Granting such other and further relief as this Court deems necessary

1 and proper.

2 **JURY DEMAND**

3 Plaintiff demands a jury trial on all issues triable by a jury herein.

4 Dated this 3rd day of December, 2020.

5 GARG GOLDEN LAW FIRM

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7 By *Amanda J. Brookhyser*
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